

ARKANSAS SUPREME COURT

No. CR 06-808

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered February 22, 2007

ANTHONY HAMPTON
Appellant

APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY, CR 2004-3368,
HON. BARRY ALAN SIMS, JUDGE

v.

STATE OF ARKANSAS
Appellee

REVERSED AND REMANDED.

PER CURIAM

A judgment and commitment order entered on July 29, 2005, reflects that appellant Anthony Hampton entered a negotiated plea of guilty to charges of aggravated robbery and theft of property. Appellant was sentenced as an habitual offender under Ark. Code Ann. § 5-4-501 (Repl. 2006)¹ to concurrent terms of 540 months' imprisonment on the robbery charge and 300 months' imprisonment on the theft charge, to be served in the Arkansas Department of Correction. Counsel representing Mr. Hampton during the entry of his plea then timely filed a petition for postconviction relief under Ark. R. Crim. P. 37.1,² alleging ineffective assistance of counsel that undermined the voluntariness of the plea. Following a hearing, the trial court entered an order denying postconviction relief. Appellant, still represented by the Public Defender's office, although briefed

¹ As the statute therein appears, there had been no amendment since prior to the dates in June 28, 2004, of the crimes as alleged in the information.

² Deputy Public Defender Mac Carder represented Mr. Hampton at the plea hearing and also filed the petition.

by different counsel, has lodged an appeal of that order in this court and that matter is now before us.

In his petition and on appeal, appellant asserts that his plea was not voluntarily entered because he would have gone to trial and would not have entered the plea had his counsel correctly advised him concerning Ark. Code Ann. § 16-93-609 (Repl. 2006)³ and his resulting ineligibility for parole under that statute. Appellant complains that his attorney failed to correct what he contends was an erroneous statement by the trial court concerning eligibility for parole during the plea hearing.

Appellant contends that the statement by the court reflects trial counsel's, appellant's and the prosecution's understanding that appellant would serve 70% of the sentence before becoming eligible for parole. Under section 16-93-609, those convicted of certain crimes after having previously been convicted on such a charge may not be considered for parole at any time during the sentence. Appellant does not contest that the statute is applicable to him, but argues that his attorney failed to advise him that the statute was applicable to him. The State contends that appellant failed to make necessary showings of a positive misrepresentation by counsel and that he would have gone to trial if correctly informed by counsel.

We are not able to reach the merits of these arguments, as the trial court failed to make findings of fact in the order. The text of the order denying postconviction relief read, in its entirety, as follows:

Defendant Hampton's petition requesting postconviction relief pursuant to Ark. R. Crim. P. 37 is denied.
IT IS SO ORDERED.

The court did not indicate any findings of fact or reference the record, other than the broad reference

³ The statute was last amended in 2001.

to the petition as a whole.

The trial court is required to make written findings of fact in a proceeding on a Rule 37.1 petition under Ark. R. Crim. P. 37.3, whether or not a hearing is conducted. We have interpreted the rule to provide that an evidentiary hearing should be held in a postconviction proceeding unless the files and record of the case conclusively show that the prisoner is entitled to no relief. *Wooten v. State*, 338 Ark. 691, 1 S.W.3d 8 (1999). The trial court has discretion pursuant to Rule 37.3(a) to decide whether the files or records are sufficient to sustain the court's findings without a hearing. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004).

Under Rule 37.3(c), after the trial court conducts a hearing, it is to determine the issues and make written findings of fact and conclusions of law with respect to those issues. Without exception, we have held that this rule is mandatory and requires written findings. *Scott v. State*, 351 Ark. 619, 96 S.W.3d 732 (2003) (*per curiam*). We have also held that the requirement of written findings of fact applies to any issue upon which a Rule 37.1 hearing is held. *Id.*

A hearing was conducted here. The record does not list the appellant as present in person, so it is not clear to us that the hearing conducted was a hearing as required by Rule 37.3(c). Nor, obviously, does the order denying postconviction relief state whether the trial court considered the evidence in the hearing in rendering its decision. Indeed, the decision to deny postconviction relief was announced at the conclusion of the hearing, without further elaboration. In any case, the written order was later entered, and as indicated contained no reference to any parts of the pleadings or record. Without factual findings by the trial court or any understanding of the basis for the decision, we are not able to conduct an adequate review. We must accordingly reverse for proceedings in accordance with Rule 37.3 and this decision.

Reversed and remanded.